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C O N F I D E N T I A L SECTION 01 OF 05 BRUSSELS 000800

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DRL FOR DAS BARKS-RUGGLES AND DIR/MLA NOYES, ERA FOR
ROBINSON, IO FOR ROHN, L FOR BELLINGER
GENEVA FOR DEPIRRO

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SUBJECT: U.S.-EU TROIKA ON HUMAN RIGHTS, FEBRUARY 16, 2006

REF: BRUSSELS 00524

Classified By: USEU POLITICAL COUNSELOR ALYCE TIDBALL, FOR REASONS 1.4
(B) AND (D)

11. (C) SUMMARY. The U.S.-EU Troika on Human Rights (COHOM), held February 16 in Brussels, provided an important forum for in-depth discussions, but no agreement on what kind of Commission on Human Rights (CHR) meeting might take place should UN agreement on the Human Rights Council (HRC) not be reached by end-February. The EU insisted the window of opportunity to form the Council was now or never, while the U.S. affirmed achieving a credible Council was more important than meeting an artificial deadline. European Council Transatlantic Director Jim Cloos discussed the recent visit of State's Legal Adviser John Bellinger (reftel), noting the dialogue was helpful and urging it continue. Delegations compared notes on promoting human rights in China, Iran, Russia, Cuba, Bolivia, Colombia, Venezuela and Guatemala. The U.S. reiterated commitment to past positions regarding the International Criminal Court (ICC). END SUMMARY.

HUMAN RIGHTS COUNCIL: TIMELINE AND ISSUES

12. (C) DEADLINE FOR A TEXT? EU head of delegation Bert Theuermann insisted the window of opportunity for establishing the Human Rights Council (HRC) is now and if we miss this moment, the window may close completely. He said Eliasson would make every effort to table a strong text, but would take care not to trigger a revolt. Here, he said, lobbying would be critical. DRL DAS Barks-Ruggles agreed on importance of keeping the momentum going, but asserted there is no firm deadline to get a good text. A good text on March 12 is certainly better than an agreement in late February that does not address the problems that have made the Commission on Human Rights a discredited body. She emphasized that the U.S. will not make compromises on identified red lines. Both sides agreed it was critical to move forward on the HRC, but not at any cost. Barks-Ruggles opined that while consensus is important we must not settle until we achieve creation of a stronger body in the interest of the U.S., the EU, and the UN.

13. (C) PREPARATIONS FOR THE COMMISSION ON HUMAN RIGHTS. Theuermann insisted that if agreement on a new HRC is not reached by end-February preparations must begin for the annual CHR meeting in Geneva. The EU does not want to leave critical human rights issues victim to a vacuum that would also damage the UN's credibility on these issues. U.S. del, by contrast, consistently maintained that we are focused on creation of an effective HRC and not on preparations for what the Secretary General has acknowledged is a discredited body. Participation in a fully discredited CHR, U.S. del insisted, would be even more damaging to the integrity of the UN.

14. (C) TRUNCATED, TECHNICAL AND TRANSITIONAL CHR MEETING. EU del repeatedly maintained that even if an acceptable HRC text is agreed before the March 13 meeting of the CHR, a short meeting of the CHR would still be necessary to renew the annual mandates until the HRC meets in June. Barks-Ruggles said the U.S. would consider participating in a truncated, technical, and transitional meeting of days, not weeks, where the mandates could be rolled over to the new HRC. Any such meeting should be non-substantive; e.g., no country-specific resolutions or other new business. She clearly emphasized that this is not about blocking criticism, but rather avoiding yet another long meeting of the discredited CHR.

15. (C) MEMBERSHIP NUMBERS FOR THE HRC. The EU favors 45-53 seats linked to equitable geographic distribution, with 51 being the preferred number. The U.S. favors 30 seats, but could perhaps increase to 40, or even 45. A reduction from 53 to 51 would be insupportable as it would imply no significant change and the reduction would impact only on the Western European and Others Group (WEOG). This would be unacceptable, and could further erode Congressional support for the UN.

16. (C) HRC ELECTORAL REQUIREMENTS. Theuermann explained that 2/3 voting for members of the new HRC, which the EU had

supported up to this point, was cast in the draft as "2/3 majority of members present and voting." In the current practice of the UN, if a member abstains he is not participating in the vote. Only those countries voting for a measure are considered "present and voting". According to Theuermann, Eliasson reports much resistance to the "2/3 majority of present and voting" and says twenty-plus countries would undoubtedly call for a vote on the issue. Theuermann suggested we compromise on absolute majority voting, in which abstentions would count toward the vote total. Barks-Ruggles said the U.S. was looking into procedural voting issues, but opined personally that perhaps the "and voting" part of the formula be removed so that if a country abstains it is still counted as "present." She asserted that the U.S. believes a high threshold - with the 2/3 majority strongly preferred - is important to assuring the credibility and integrity Council membership.

17. (C) HRC TERM LIMITS. A key issue for the EU is term limits. Barks-Ruggles said the U.S. does not like term limits, but might be willing to explore supporting something like past proposals involving two terms and one year off.

18. (C) KEEPING HR OFFENDERS OFF THE HRC. U.S. Del raised throughout the meeting the importance of a tangible mechanism for excluding the worst HR offenders from the HRC. U.S. proposal was to exclude states with UNSC resolutions against them for egregious human rights violations or support for terrorism. This is a very low bar, Barks-Ruggles asserted, as it currently would only disqualify two states. EU Commission Head for Human Rights Rolf Timans questioned why the U.S. cares so deeply about this when it only affects so few states and may decrease support for the HRC overall. He pointed to OP 8, which Barks-Ruggles quickly noted was only a statement advising states to take the human rights situation in candidate states into consideration when voting at the HRC. This advisory statement, she asserted, could not be considered a tangible mechanism to ensure the integrity of the HRC. While she recognized Timan's assertion that the UNSC sanctions exclusion mechanism could draw widespread opposition, she insisted there must be a way to keep the worst human rights offenders off the HRC. DRL/MLA Director Noyes noted this is also an issue of importance for the U.S. Congress.

19. (C) HRC MEETING FREQUENCY. Barks-Ruggles said the U.S. likes the EU proposal of four to six sessions a year as a way to detract from the circus atmosphere produced by the less frequent meetings of the Commission. EU raised concerns about NGOs from poorer southern nations being unable to attend more frequent sessions, but said northern NGOs are discussing ways to help in this respect.

10. (C) TRIGGERING HRC EMERGENCY SESSIONS. Noyes noted U.S. concerns about the General Assembly trigger for Special Sessions of the HRC, as this could result in repeated anti-Israel and anti-U.S. sessions. EU del emphasized that triggers should be low so that important situations can easily make it to the Council, unlike past inaction of the Commission during the Rwanda and Andijan crises. Barks-Ruggles added that we support multiple trigger mechanisms through the Security Council, High Commissioner, and so forth to the General Assembly mechanism.

11. (C) OTHER HRC TEXT ISSUES. Theuermann and Finnish delegation leader Suurpaa appealed to the U.S. to accept OP-4 language on the "right to development" as a way to gain concessions in other areas. Barks-Ruggles said the United States opposes creating a hierarchy of human rights in the UN by highlighting one right over others. Noyes noted our similar opposition to the "religious intolerance" insertions proposed by Pakistan. U.S. del suggested we could drop the issue of Universal Periodic Review in exchange for concessions in other areas, as we have noted a distinct lack of enthusiasm for this issue. Theuermann said Mexico, Switzerland and Canada are big proponents of the provision, while Cuba and Pakistan are among those opposed.

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REFLECTIONS ON BELLINGER'S VISIT AND GUANTANAMO
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12. (C) In his brief appearance, Jim Cloos highlighted initial reactions to the recent Bellinger visit. He saw the meeting as extremely useful, and said the EU would like follow up discussions in the context of our joint fight against terrorism. He noted the important distinction Bellinger made between the War on Terror as a political term and the War on Al Qaeda as a legal distinction. The Secretary's statement and the Detainee Treatment Act ("McCain

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Amendment") were important in clarifying the U.S. absolute condemnation of torture. The EU initially agreed that Afghanistan was an international armed conflict, he said, but questions remain in EU minds whether it still is. Cloos asked why the U.S. opened itself to criticism on the UN

Special Rapporteurs' effort to visit Guantanamo, cautioning that we should not underestimate the problems their report will bring not just to the U.S., but also to U.S. allies and EU member states. He asserted his belief that the detainees deserve a minimum standard of due process rights, embodied in Article 3 of the Third Geneva Conventions and Article 75 of the 1st Protocol. He noted that the International Committee of the Red Cross had commented, behind closed doors, that from what they had observed at Guantanamo it would be better for the U.S. to let the Special Rapporteurs in. Cloos continued that the EU had understood at Geneva last year that the Special Rapporteurs would be permitted to visit under the terms of their mandate (i.e., including private interviews with detainees), a fact disputed by the U.S. delegation. Finally, he warned that it would be difficult for the EU to respond if this report resulted in a U.S. attack on the Special Rapporteurs and the system they have championed.

¶14. (C) U.S. del responded that Bellinger's reaction to his visit was equally positive, and that he would welcome a follow-up and EU suggestions. Barks-Ruggles noted with regret that U.S. examination of the preliminary draft of the Rapporteurs' report led the USG to conclude that the Rapporteurs did not use the substantial information provided to them. In addition, they did not accept an invitation to visit Guantanamo that would have given them the same access received by our Congressional leaders. Because they had not seen the situation for themselves and had largely ignored the information provided to them, the USG reserves the right to respond in full to the Special Rapporteur's report.

¶15. (C) Theuermann said the failure of the Special Rapporteurs to visit Guantanamo under their mandate is a problem for EU credibility with third countries and said we must be able to refute charges of double standards. He said how the U.S. responds and engages will be very important. EU Council High Representative for Human Rights Matthiessen asked if the Special Rapporteurs would still be allowed to visit Guantanamo; Barks-Ruggles reiterated that her understanding was that the offer was still on the table.

----- COUNTRY DIALOGUES -----

17, (C) CHINA. Timans informed that the next EU-China dialogue will be held in Vienna in May. The main theme will be freedom of expression, with particular emphasis on internet censorship. Other issues will include fair trial rights and the death penalty as well as International Covenant on Civil and Political Rights (ICCPR) ratification and release of Tiananmen prisoners. Barks-Ruggles informed that DRL A/S Lowenkron was in China until February 19 to begin discussing the possible resumption of a results-based dialogue after the trip of UN Special Rapporteur Manfred Novak to China fulfilled the conditions previously set for resumption. She agreed with the importance of the internet censorship issue, noting that Iran was now starting to copy the Chinese model for dealing with its own dissidents. Theuermann requested a briefing on Lowenkron's trip upon his return. Timans noted the Chinese government had rejected some of the programs selected to receive EU civil society grants this year, thus the EU had scrapped the entire program.

¶18. (C) IRAN. Although the EU officially has a human rights dialogue with Iran, Theuermann said there have been no serious proposals from Iran demonstrating interest in a real dialogue. Lofty ideas about exchange of intellectuals would do little to ease EU concerns. Barks-Ruggles concurred with the EU's skepticism and its insistence on a results-oriented approach to Iran and urged greater U.S.-EU cooperation and discussion on human rights and democracy issues in Iran - including how to support civil society, a free press, and human rights activists. Theuermann said the EU routed much of its assistance through UN programs like the UN Juvenile Agency and UNODCP.

¶19. (C) RUSSIA. The EU's second human rights dialogue with Russia will be held March 3 in Vienna. Suurpaa said they would raise Chechnya; rule of law issues, particularly as it relates to the Russian armed forces; NGO issues, particularly the recent legislation to limit their activities. A Council of Europe opinion on the NGO issue will soon be released. Barks-Ruggles noted U.S. shared concerns on these issues, and encouraged close coordination to better press the GOR. Matthiessen emphasized that the U.S. and EU should coordinate efforts to hold Russia to the highest standards.

----- OTHER COUNTRY SITUATIONS AND THE HR TOOLBOX -----

¶20. (U) Introducing this topic, Theuermann suggested we must find a way to better integrate HR into the political dialogue of desk officers in geographic units. U.S. del also pointed to efforts to support the Malian Chair of the Community for Democracies (CD) and the UN Democracy Fund (DF) as new tools to promote human rights. Theuermann noted that the DF is

supported by the EU, but not the CD as the EU is not a member. EU member states involved in the CD could be helpful in that work, in their national capacities. Overall, Barks-Ruggles suggested the U.S. would like to build a "Democracy Caucus" in UN and World Bodies.

121. (U) CUBA. Noyes reiterated U.S. desire to work together to prevent abuses and to gain the release of political prisoners. It is important, she emphasized, to bolster these efforts by inviting dissidents to events to show U.S. and EU support. Timans agreed, assuring the EU commitment in these areas has not slipped.

122. (U) BOLIVIA. Highlighting U.S. interest in working with the government for more democracy, rule of law, and counter-narcotics efforts, Noyes noted that we are focusing on Bolivian President Morales' actions, not his political comments. Timans said EU was impressed with U.S. restraint. He said the EU works closely through member states on democracy, development, and stability for Bolivia, but is less aggressive on anti-drug efforts because it is less of an issue for Europe.

123. (C) COLOMBIA. Noyes suggested more support be given to demobilization and reintegration of paramilitary forces. She commended the EU on its support for these programs, and, noting our own increased request to the Congress, asked if the EU could consider giving more. Timans countered that the EU is not always encouraged by the progress, but wishes to see it continue. The EU delegation was also concerned that Colombia may try to reduce the role of the Office of the High Commissioner for Human Rights in Bogota. DePirro suggested the Commissioner would buy some goodwill by noting improvements where they exist, rather than being so uniformly negative.

124. (C) VENEZUELA. Noting U.S. concern about Venezuela's race for the UN Security Council, Noyes asserted the behavior of the Venezuelan perm rep has been outright disruptive. Guatemala, by contrast, has troops currently committed to six different UN peacekeeping efforts. Guatemala has never been on the Security Council, compared to Venezuela's four terms. Theuermann, while not challenging the assertion that Guatemala has been more active in UN peacekeeping, pointed out that it is still going through some serious problems and that "human rights is very out of fashion in Guatemala." He asserted the U.S. and EU should engage Guatemala so it does not slip back.

THE ICC AND THE NETHERCUTT AMENDMENT

25, (U) Timans acknowledged the well-known U.S. position on the International Criminal Court (ICC), but hoped that, over time, the behavior of the court would allay U.S. concerns, pointing out that the ICC has declined to hear Iraq cases. He urged the Administration to use its authorization to waive the application of the Nethercutt Amendment rather than cut assistance to young democracies supporting the ICC. Noyes reiterated the U.S. position that countries that wished to continue receiving U.S. assistance could enter into article 98 agreements with the U.S., as contemplated in the Rome Statute.

MEETING PARTICIPANTS

126. (U) EU participants included:

Bert Theuermann, Director of Human Rights, Austrian MFA
Thomas Unger, Human Rights Desk Officer, Austria MFA
Johanna Surpaa, Director for Human Rights Policy, Finnish MFA
Janina Hasenson, Legal Officer for Human Rights Policy, Finnish MFA
Jim Cloos, Director of the Directorate General on the Americas, UN and Human Rights, and Counter-Terrorism, EU Council Secretariat
Michael Matthiessen, Personal Representative to the High Representative/Secretary General for Human Rights, EU Council Secretariat

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Dr. Hadewych Hazelzet, Human Rights Desk Officer, EU Council Secretariat

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Didier Cosse, Human Rights Desk Officer, EU Council Secretariat

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Rolf Timans, Head of Human Rights and Democratization, European Commission
Christiane Hohmann, U.S. Unit, DG RELEX, European Commission
Tobias King, Human Rights Unit, DG RELEX, European Commission

127. (U) U.S. participants included:

Erica Barks-Ruggles, Deputy Assistant Secretary, DRL
Julieta Noyes, Director of Multilateral Affairs, DRL
Doug Rohn, Director of Social and Humanitarian Affairs, IO
Velia DePirro, Counselor for Political Affairs and
Specialized Agencies, USUN Geneva
Alyce Tidball, Counselor for Political Affairs, USEU
Dennis Schmelzer, Intern, Political Section, USEU

128. (U) This was cleared by delegation.

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